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VIOLENCE AGAINST WOMEN

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INTRODUCTION

Realizing that violence against women had not been specifically addressed in any international human rights instrument, the Commission on the Status of Women convened an inter-sessional working group that met in September 1992 for the purpose of drafting a declaration on violence against women. Interestingly, the delegations of the 48 Member States participating in the meeting were composed of 41 men and 58 women.

The working group adopted by consensus a draft text, which is reproduced below, that will be submitted to the Commission on the Status of Women at its thirty-seventh session for approval and submission to the Economic and Social Council for consideration at its first regular session of 1993. It is hoped that the General Assembly will subsequently adopt the draft declaration at its forty-eighth session.

DRAFT DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN

The General Assembly,

Recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human persons,

Noting that these rights and principles are enshrined in international instruments, including, *inter alia*, the Universal Declaration of Human Rights, a/ the International Covenant on Civil and Political Rights, b/ the International Covenant on Economic, Social and Cultural Rights, b/ the Convention on the Elimination of All Forms of Discrimination against Women, c/ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, d/

Recognizing that the effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the present Declaration will strengthen and complement that process,

Concerned that violence against women is an obstacle to the achievement of equality, development and peace, as recognized in the Nairobi Forward-looking Strategies for the Advancement of Women, e/ which recommended a set of measures to combat violence against women, and to the full implementation of the Convention on the Elimination of All Forms of Discrimination against Women,

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a/ General Assembly resolution 217 A (III) of 10 December 1948.

b/ General Assembly resolution 2200 A (XXI), annex, of 16 December 1966.

c/ General Assembly resolution 34/180, annex, of 18 December 1979.

d/ General Assembly resolution 39/46, annex, of 10 December 1984.

e/ *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, Kenya, 15-26 July 1985* (United Nations publication, Sales No. E.85.IV.10), chap. I, sect. A.

Affirming that violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms, and concerned about the long-standing failure to protect and promote these rights and freedoms in relation to violence against women,

Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of their full advancement, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position as compared to men,

Concerned that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence,

Recalling Economic and Social Council resolution 1990/15 of 24 May 1990, the annex to which, *inter alia*, recognizes that violence against women in the family and society is pervasive and cuts across lines of income, class and culture, and must be matched by urgent and effective steps to eliminate its incidence,

Recalling further Economic and Social Council resolution 1991/18 of 30 May 1991, which, *inter alia*, recommends the development of a framework for an international instrument that would address explicitly the issue of violence against women,

Welcoming the role that women's movements have played in drawing increasing attention to the nature, severity and magnitude of the problem of violence against women,

Alarmed that women's opportunities to achieve legal, social, political and economic equality in society are limited, *inter alia*, by continuing and endemic violence,

Convinced that in the light of the above there is need for: (a) a clear and comprehensive definition of violence against women; (b) a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms; (c) a commitment by States in respect of their responsibilities; and (d) a commitment by the international community at large towards the elimination of violence against women,

1. *Solemnly proclaims* the following Declaration and urges that all efforts be made so that it becomes generally known and respected.

Article 1

For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life.

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

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Article 3

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, *inter alia*:

(a) The right to life; f/

(b) The right to equality; g/

(c) The right to liberty and security of person; h/

(d) The right to equal protection under the law; i/

(e) The right to be free from all forms of discrimination; j/

(f) The right to the highest standard attainable of physical and mental health; j/

(g) The right to just and favourable conditions of work; k/

(h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment. l/

Article 4

States should condemn violence against women and should not invoke any custom, tradition or religious or other consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

(a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women[3] or withdrawing reservations to the Convention;

(b) Refrain from engaging in violence against women;

(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

(d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;

(e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for this purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with this subject;

(f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that

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f/ Universal Declaration of Human Rights, article 3; and International Covenant on Civil and Political Rights, article 6.

g/ International Convenant on Civil and Political Rights, article 26.

h/ Universal Declaration of Human Rights, article 3; and International Covenant on Civil and Political Rights, article 9.

i/ International Covenant on Civil and Political Rights, article 26.

j/ International Covenant on Economic, Social and Cultural Rights, article 12.

k/ Universal Declaration of Human Rights, article 23; and International Covenant on Economic, Social and Cultural Rights, articles 6 and 7.

l/ Universal Declaration of Human Rights, article 5; International Covenant on Civil and Political Rights, article 7; and Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

the re-victimization of women does not occur because of gender-insensitive laws, enforcement practices or other interventions;

(g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

(h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

(k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; these statistics and findings of the research will be made public;

(l) Adopt measures directed to the elimination of violence against women who are especially vulnerable to violence;

(m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;

(n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;

(o) Recognize the important role of the women's movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of violence against women;

(p) Facilitate and enhance the work of the women's movement and non-governmental organizations and should cooperate with them at local, national and regional levels;

(q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

Article 5

The organs and specialized agencies of the United Nations system should, within their respective fields of competence, contribute to the recognition and realization of the rights and the principles set forth in the present Declaration, and to this end should, *inter alia*:

(a) Foster international and regional cooperation with a view to defining regional strategies for combating violence, exchanging experiences and financing programmes relating to the elimination of violence against women;

(b) Promote meetings and seminars with the aim of creating and raising the awareness among all persons in respect of the issue of the elimination of violence against women;

(c) Foster coordination and exchange within the United Nations system between human rights treaty bodies to effectively address the matter;

(d) Include in analyses prepared by bodies and agencies of the United Nations system of social trends and problems, such as the periodic reports on the world social situation, examination of trends in violence against women;

(e) Encourage coordination between bodies and agencies of the United Nations system to incorporate the issue of violence against women into ongoing programmes, particularly with reference to groups of women particularly vulnerable to violence;

(f) Promote the formulation of guidelines or manuals relating to violence against women, taking into account the measures mentioned herein;

(g) Consider the issue of the elimination of violence against women, as appropriate, in fulfilling their mandates, including with respect to the implementation of human rights instruments;

(h) Cooperate with non-governmental organizations in addressing violence against women.

Article 6

Nothing in the present Declaration shall affect any provision that is more conducive to the elimination of violence against women that may be contained in the legislation of a State or in any international convention, treaty or other instrument in force in a State.

HISTORICAL BACKGROUND

The dimensions of violence against women, especially in the family, had been concealed for so long that its seriousness had not attracted international attention. During the last 20 years, however, recognition of the fact that violence against women is a major problem has grown and concern has escalated to the point that the subject has become a priority on the international agenda.

Only in 1975, at the World Conference of the International Women's Year held at Mexico City, was the issue of conflict within the family raised. Also in 1975, the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders noted that sexual assault, which particularly affects women, was becoming more prevalent in many parts of the world, although it remained largely a "hidden" crime.[1]

In 1979, the General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women, article 1 of which defines discrimination against women as:

"... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."[2]

The Convention does not explicitly state in any of its articles that violence is a form of discrimination or that it constitutes an obstacle to the achievement of development, peace and equality, although the point could be made that, as a form of discrimination, violence is included implicitly. The absence of explicit mention of violence in the text of the Convention, however, means that there is no mandate for States parties to report on that issue and that they have no legal obligation to adjust their national legislation.

The World Conference of the United Nations Decade for Women: Equality, Development and Peace, held at Copenhagen in 1980, adopted a resolution entitled "Battered women and violence in the family".[3] The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, also held in 1980, adopted a resolution entitled "Specific needs of women prisoners", recommending that continuing efforts should be made to ensure that woman offenders were treated fairly and equally during arrest, trial, sentence and imprisonment, and requesting that time should be allotted for the study of women as offenders and victims at future congresses and their preparatory meetings, as well as in the work of the Committee on Crime Prevention and Control.[4]

In 1982, the Economic and Social Council, in its resolution 1982/22 entitled "Abuses against women and children", noted the continued and consistent concern expressed by the international community at the blatant and inhuman abuses of women and children, recognizing the evils of such abuses as kidnapping, abduction, forced child labour, battered women and children,

violence in the family, rape, prostitution, and the inevitable serious problems of mental and physical health.

In 1983, the Crime Prevention and Criminal Justice Branch initiated the first "United Nations survey of the situation of women and the administration of criminal justice systems, 1970-1982" (A/CONF.121/16, annex). The survey was based on data and information gathered from 61 countries and revealed a serious incidence of domestic violence and the inadequacy of judicial response in many countries. During 1983 and 1984, most of the regional preparatory meetings for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders considered violence against women and the victimization of women and children with concern. It was emphasized that the situation of women as the victims of crimes such as assault, rape, sexual offences and family violence should receive greater attention in future.

In 1984, the Economic and Social Council, in its resolution 1984/14 entitled "Violence in the family", was:

> *"Concerned that information on the nature of this problem and its causes is often concealed and thus is not widely available and that efforts to prevent violence in the family, to provide assistance to the victims and to prevent recurrences need greater public awareness and publicity."*

The Committee on Crime Prevention and Control, at its eighth session in 1984, considered the question of female victimization. Aside from the difficulties in recording and measurement, there was a clear indication that the most prevalent forms of female victimization were sex-related violence, abuse and exploitation. Furthermore, there appeared to be serious increases in some of the categories of female victimization, especially rape. The phenomenon of domestic violence was reported as a particular concern.

The Nairobi Forward-looking Strategies for the Advancement of Women, adopted in 1985 at the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, include violence against women under the section on peace.[3] Paragraph 258 reads as follows:

> *"Violence against women exists in various forms in everyday life in all societies. Women are beaten, mutilated, burned, sexually abused and raped. Such violence is a major obstacle to the achievement of peace and the other objectives of the Decade and should be given special attention. Women victims of violence should be given special attention and comprehensive assistance. To this end, legal measures should be formulated to prevent violence and to assist women victims. National machinery should be established in order to deal with the question of violence against women within the family and society. Preventive policies should be elaborated, and institutionalized forms of assistance to women victims provided."*

Under the section on areas of special concern, paragraph 288 on abused women states: "Gender-specific violence is increasing and Governments must affirm the dignity of women, as a priority action." It is recommended that Governments should therefore intensify efforts to establish or strengthen forms of assistance to victims of such violence and establish policies and legislative measures to ascertain its causes and prevent and eliminate such violence.

Also in 1985, the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted a resolution entitled "Domestic violence". Under agenda item 5, victims of crime, it was observed that women were particularly vulnerable to exploitation, to the deprivation of rights and to serious interpersonal violence, particularly sexual assault and domestic violence.[4] Following the Congress, the General Assembly adopted, in its resolution 40/34, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the provisions of which are applicable to the general situation of women as victims, and resolution 40/36 on domestic violence, which was the first General Assembly resolution directly concerning domestic violence. It requested the Secretary-General to intensify research on domestic violence from a criminological perspective to formulate distinct action-oriented strategies that could serve as a basis for policy formulation and spelt out specific measures to be undertaken by Member States.

An Expert Group Meeting on Violence in the Family with Special Emphasis on its Effects on Women was convened in December 1986 (see *Women News* No. 10, January 1987). The meeting found that the incidence of domestic violence crossed all barriers of class, income, race, culture and religion and that the problems were exacerbated due to the pervasive idea of the family being sacred and above sanction. These ideas contributed to keeping violence in the home a highly underreported crime. It was stated that overcoming the problem of domestic violence would involve, inter alia, a massive education programme including teaching society equality between men and women and the police, legislature and judiciary addressing domestic violence as a crime. During the discussion it was also

said that domestic violence was a result of a societal structure where men dominated and the women were conditioned to accept a secondary position in society. It was also said that the problems associated with domestic violence were enhanced by the victim's and society's view of the family, the unwillingness of the victim to report the crime and the unwillingness of the authorities and society to accept domestic violence as a crime and as an issue to be addressed in the public sphere. These misconceptions should be addressed in the future. Education in non-violent conflict resolution and the education of care-givers, police and the State in the special needs of the victims of domestic violence were of primary importance.

In 1987, in its resolution 1987/24, the Economic and Social Council selected the issue of violence against women within the family and society as a priority theme in the area of peace for consideration by the Commission on the Status of Women at its thirty-second session in 1988.

In 1988, on the recommendation of the Commission on the Status of Women, the Council adopted resolution 1988/27 on efforts to eradicate violence against women within the family and society. By this resolution, Member States were called upon to take the necessary steps to give effect to the recommendations in the report of the Secretary-General (E/CN.6/1988/6), which were basically the recommendations of the Expert Group Meeting held in 1986. It also invited organizations and institutions dealing with various aspects of the problem in such fields as social welfare, criminal justice, education, health and shelter, as well as research, to establish an international network for cooperation to facilitate complementarity of action.

In 1989, the Committee on the Elimination of All Forms of Discrimination against Women adopted general recommendation 12 (eighth session).[7] It recommends that States parties should include in their periodic reports to the Committee information about the legislation in force to protect women against the incidence of all kinds of violence in everyday life, other measures adopted to eradicate this violence, the existence of support services for women who are the victims of aggression or abuses, and statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence. Also in 1989, the Division for the Advancement of Women issued a publication entitled *Violence against women in the family* (ST/CSDHA/2). Its intention was to provide a worldwide picture of violence to women in the family and to prove that the abuse of women was not limited to one culture or society. The publication reiterated the need for further research and action to combat the problem.

In 1990, the Commission on the Status of Women undertook the first five-yearly review and appraisal of the implementation of the Forward-looking Strategies. Paragraph 23 of its conclusions and recommendations reads: "The recognition that violence against women in the family and society is pervasive and cuts across lines of income, class and culture must be matched by urgent and effective steps to eliminate its incidence. Violence against women derives from their unequal status in society.

Recommendation XXII. Governments should take immediate measures to establish appropriate penalties for violence against women in the family, the work place and society. Governments and other relevant agencies should also undertake policies to prevent, control and reduce the impact of violence on women in the family, the workplace and society. Governments and relevant agencies, women's organizations, non-governmental organizations and the private sector should develop appropriate correctional, educational and social services, including shelters, training programmes for law enforcement officers, the judiciary and health and social service personnel, as well as adequate deterrent and corrective measures. The number of women at all levels of law enforcement, legal assistance and the judicial system should be increased. The United Nations system, Governments and non-governmental organizations should study the relationship between the portrayal of violence against women in the media and violence against women in the family and society, including possible effects of new transnational transmission technologies." (E/1990/90)

Also in 1990, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders[8] adopted a resolution on domestic violence, which was endorsed by the General Assembly in its resolution 45/114. It urged Member States to exchange information, experience and research findings between governmental and non-governmental organizations regarding domestic violence and recommended the use of the United Nations Criminal Justice Information Network and other available means to facilitate the exchange of information concerning domestic violence and the means of curtailing it. It also requested the Secretary-General to convene a working group of experts to formulate guidelines or a manual for practitioners concerning the problems of domestic violence.

In 1991, the Economic and Social Council by its resolution 1991/18 recommended that a framework for an international instrument be developed in consultation with the Committee on the Elimination of Discrimination against Women that would address explicitly the issue of violence against women. It also requested the Secretary-General to convene in 1991 or 1992 a meeting of experts to address the issue of violence against women and to discuss the possibilities of preparing such an international instrument and the elements to be contained therein. This meeting was held at Vienna from 11 to 15 November 1991 (see *Women News* Nos. 7 and 8, 1991). The experts decided to recommend strategies as incremental approaches to address violence against women. A draft declaration on violence against women was approved by the experts and submitted to the Commission on the Status of Women for consideration at its thirty-sixth session.

In January 1992, the Committee on the Elimination of Discrimination against Women adopted general recommendation 19 (eleventh session) wherein it is stated that: "Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men".[9] It specifically recommends that States Parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity and that States parties in their reports to the Committee should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women, and the kinds of violence that result.

In March 1992, the Commission on the Status of Women considered a report of the Secretary-General on violence against women in all its forms (E/CN.6/1992/4), which contained the recommendations of the meeting held in November 1991. By a draft resolution the Commission recommended, *inter alia*, that the Economic and Social Council convene an inter-sessional working group of the Commission to develop further the draft declaration that had been adopted by the expert group meeting.

In July 1992, by its resolution 1992/18, the Economic and Social Council decided to convene the inter-sessional working group of the Commission on the Status of Women, which met from 31 August to 4 September 1992 and adopted the draft declaration on violence against women.

TREATMENT OF VIOLENCE AGAINST WOMEN AS REFLECTED IN NATIONAL LEGISLATION IN DIFFERENT LEGAL SYSTEMS*

Whether they live in the northern hemisphere or the southern hemisphere, in a rich country or a poor one, women are subjected to violence that results in the deprivation of their fundamental human rights. This violence, which occurs in many contexts, including the home, takes various forms: physical battery, sexual and psychological abuse, harassment at the workplace and elsewhere, female foeticide, infanticide and infant neglect, dowry-related violence, female genital mutilation and forced prostitution.

Few national legal systems approach the various forms of violence against women as if they resulted from a uniform structural cause or shared common features, but rather as separate occurrences. No legal system provides comprehensive legal protection for all the forms of violence to which women might be subject, but each provides legal remedies for certain identified forms of violence against women in discrete legal texts.

In many jurisdictions, except in so far as sexual abuses are concerned, violence against

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* Taken from a background paper prepared by Jane Connors, lecturer in law, School of Oriental and African Studies, University of London, United Kingdom of Great Britain and Northern Ireland. The paper was presented as background material to the inter-sessional working group on violence against women.

women receives no special treatment and women must rely on the general law. Even in those jurisdictions where there has been some recognition of the special vulnerability of women in the domestic context, legal remedies are usually to be found in different legal instruments and often fall within disparate areas of the law.[8] To a certain extent, therefore, the treatment that the subject of violence against women receives in national legislation in different legal systems reflects an approach that is random and reactive, rather than reasoned and principled. A more synthetic approach to the subject, which appears to recognize the structural cause of all manifestations of violence against women, is becoming apparent, as can be seen from the draft inter-American convention on the prevention, punishment and eradication of violence against women, the Solemn Final Declaration of the First Conference of European Ministers on Physical and Sexual Violence against Women and general recommendation 19 (eleventh session) of the Committee on the Elimination of Discrimination against Women.[9]

A. Violence against women in the home

Introduction

Violence against women perpetrated by spouses and other members of their households is increasingly recognized by national legal systems as a serious problem. Indeed, two recently revised national constitutions specifically condemn violence in the home. Thus, the Brazilian Constitution of 1988, in article 226, provides that "the state should assist the family, in the person of each of its members, and should create mechanisms so as to impede violence in the sphere of its relationships", while the Colombian Constitution of 1989, in article 42, provides that:

> *"Family relations are based on the equality of rights and duties of the couple and on the reciprocal rights of all its members. ... Any form of violence in the family is considered destructive of its harmony and unity and will be sanctioned according to law."*

Despite this growing recognition, the legal relief available to women who are victims of such violence remains undeveloped in most national systems. In general, victims may avail themselves of the criminal law, matrimonial relief and civil actions for compensation. In some jurisdictions, however, new remedies, variously entitled injunctions, interdicts and protection orders, have been introduced to provide relief in cases of domestic violence. It is unusual for jurisdictions to provide all forms of relief in one legal instrument. However, the Puerto Rican Domestic Violence Law of 1989 is an exception to this general rule as it enacts, in a single statute, protection orders and specific crimes of domestic violence, which are punishable by imprisonment and entitle the victim to compensation from the offender.

Criminal law

Except where sexual crimes are concerned, criminal codes do not draw a distinction between violence against women and men. Furthermore, such codes rarely include specific provisions penalizing violence in the family. Therefore, criminal process with respect to acts occurring within the family will be available if the acts meet the definition of crimes such as common assault, assault occasioning actual bodily harm, assault occasioning grievous bodily harm, aggravated assault, wounding, manslaughter or murder.

Exceptionally, national legal systems do establish offences that are specific to the domestic context. Thus, the Puerto Rican Domestic Violence Law of 1989 introduces five crimes, punishable by imprisonment, which are defined specifically in reference to the domestic context. A small proportion of states in the United States of America have "spouse abuse" statutes that are similar to the Puerto Rican law and the Portuguese Criminal Code. In addition to general provisions covering physical violence, these statutes criminalize negligent or cruel treatment between spouses and the failure to provide necessary medical care, which is punishable by imprisonment of between six months and three years and a fine. Similarly, Spain criminalizes physical violence against a spouse or any person

> *Dowry deaths in the country have shown a rising trend. This social evil claimed 1,572 victims in various States during 1987.*
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> Indian Women in Development (National Institute of Public Cooperation and Child Development) vol.1, No. 3 (1988).

with whom the offender has an emotional relationship. Furthermore, the Indian Penal Code includes specific crimes that address dowry-related domestic violence.

In principle, therefore, in most jurisdictions, the criminal law can be invoked for many forms of domestic violence as a man is not entitled by reason of marriage or cohabitation to inflict violence on his wife. Emotional and psychological abuse, however, normally does not meet the definition of crimes in criminal codes and in many jurisdictions a man is entitled to force his wife to perform normal sexual acts. In some jurisdictions, husbands are entitled to subject their wives to a limited amount of physical chastisement, an entitlement that can be found in legislation or, more commonly, gleaned from cultural practice.[11] Some legal systems, furthermore, particularly those based on the Napoleonic Code, excuse violence that is regarded as arising out of a man's "honour". The honour defence, which in some cases is provided for explicitly in the criminal code or in others, is applied judicially, and excuses a husband who murders his wife and her lover when they are found in *flagrante delicto*. Other jurisdictions, while not providing the honour defence, allow for lighter penalties for crimes if they are regarded as having been provoked by the victim or motivated by a relevant moral or social value. These defences are often successfully argued by husbands or other male relatives who abuse women.

In most jurisdictions, although theoretically available, criminal proceedings are not brought against perpetrators of domestic violence because societies, while considering such violence to be regrettable, generally regard it as a private and family matter and thus outside the purview of the criminal justice system. Furthermore, in many systems, the laws of criminal procedure limit the availability of the criminal law in domestic circumstances. In many countries, the victim must initiate prosecution for all but the most serious crimes, wives are prohibited from giving evidence against their husbands and police powers in cases of domestic crime are unclear.

Recent reforms in a number of countries have addressed some of these procedural difficulties. In a number of countries, persons other than the claimant may initiate prosecution. Thus, for example, in Canada, the police are directed to lay criminal charges in all cases of domestic assault even if the victim would prefer to withdraw such charges, while in Sweden, woman-beating has been made a public offence, so it is possible for persons other than the woman to take action against the perpetrator. In Norway, legislation introduced in 1988 no longer limits prosecutions in domestic violence to cases where the victim files a complaint. Thus a number of jurisdictions make wives competent to give evidence against their husbands in criminal cases, while others make them compellable witnesses against their husbands in such cases.

Some jurisdictions have attempted to encourage criminal prosecution in cases of domestic assault by clarifying police powers. In a number of countries, therefore, the police have been given special powers of entry to private premises where domestic violence is suspected. Thus, in New South Wales, Australia, legislation entitles the police to enter premises, without warrant, where they believe, on reasonable grounds, that a domestic violence offence is imminent, is being, or is about to be, committed and they are invited to enter by a person who apparently lives there and they are not expressly refused entry by the occupier. A further provision allows a police officer to enter the premises, even though the occupier refuses such entry, when the officer is invited by the person believed to be, or about to be, a victim of domestic violence, while in cases where this legislation does not apply, entry warrants may be acquired by radio telephone.

In a number of jurisdictions, police powers to arrest in situations of domestic crime have also been clarified. At least 10 states and numerous cities in the United States of America have laws or policies that mandate arrest for felony or misdemeanour assaults [12] and, in a growing number of countries, police guidelines promote a policy of presumptive arrest in cases of domestic violence. Moreover, in many countries, protection orders have been introduced. These are usually enforceable by arrest.

Matrimonial relief

In most national legal systems, matrimonial relief is available to women who are subjected to domestic violence by their husbands. Divorce is now legally available in most legal systems,[13] but the grounds required for divorce vary widely. Essentially, however, divorce law falls into one of two models: the first allows divorce where the marriage has broken down irretrievably, which is evidenced by an assertion of one of the parties or a period of separation; the second allows divorce where the other party has been guilty of some fault. In the case of the former, no legal difficulty will stand in the way of a woman who

wishes to divorce her abusive husband; however, the availability of divorce in systems that require proof of fault depends on whether the actions of the husband are perceived as amounting to a fault.

In most jurisdictions, physical cruelty is a ground for dissolution of marriage, although some jurisdictions do demand proof of severe cruelty[14] and a majority recognize psychological cruelty or emotional abuse. It is clear, however, that a significant number of legal systems will not consider emotional abuse or minor physical cruelty as grounds for divorce. Furthermore, most jurisdictions, particularly those that do not recognize marital rape or those where legislation defines sexual relations as an obligation of marriage,[15] do not consider unwanted sexual attention by the husband as grounds for divorce.

There are other forms of matrimonial relief available to wives who are the victims of abuse. Judicial separation, which relieves the petitioner of the duty to cohabit with her husband, is available in those countries that do not allow divorce and as an alternative in most countries where divorce is allowed. Judicial separation is usually available on the same grounds as divorce. In some systems, furthermore, special orders are available to married couples, which are of relevance in the context of domestic violence. In France, for example, spouses may be granted permission to live apart by the Chairman of the Tribunal de Grande Instance or by a judge in chambers. Article 170 of the Swiss Civil Code entitles the wife to a separate dwelling if her health, reputation or business prospects are seriously endangered by cohabitation with her husband. In many systems, matrimonial injunctions or interdicts are available as incidental relief in suits for divorce or separation. For example, section 103 of the Malaysian Law Reform (Marriage and Divorce) Act 1982 allows a woman who is seeking a divorce to acquire a court order prohibiting her husband from interfering with her in any way.

From research in Belgium, it appears that 58 per cent of women have experienced some form of physical or sexual violence. Concerning sexual violence, 6.5 per cent of 956 Belgian women interviewed had experienced a form of sexual violence like attempted rape or rape; ... 5.2 per cent had suffered serious physical or sexual violence from their partner. In Germany, 18 per cent of men admit to having beaten their wives. In Ireland, 80 per cent of the population believes that violence occurs in Irish families. In Greece, 64.6 per cent of a group of women (a random sample) studied stated that they had been raped.

Report: Physical and Sexual Violence against Women - Situation in Europe 1991 (Brussels, INBEL).

Civil wrongs and compensation

Most legal systems provide an aggrieved person with personal remedies at civil law for any wrong that has been done to her or him. Thus, if a person is assaulted by another, in any context, she or he can proceed against the attacker at civil law, in tort or delict, for monetary compensation. In principle, therefore, any victim of domestic violence is able to bring a civil action against the person who assaults or commits any other civil wrong against her.

In a number of national legal systems, access to compensation through the civil system in the domestic context is limited. In certain jurisdictions, women are considered to be legal minors and must sue under the guardianship of a man: their father or brother if they are unmarried, or their husband if they are married. This can effectively obstruct any access to the civil law. In other legal systems, although women are fully competent to bring legal actions, legislation prohibits or limits actions against spouses.

In most jurisdictions, persons convicted of a criminal offence can be directed to pay compensation to the victim of the crime by the court that hears the criminal charge. In such jurisdictions, the court might order a domestic violence offender to compensate his victim. Indeed, in the Puerto Rican Domestic Violence Law, it is clearly provided that such an offender may be required to compensate his victim. In some jurisdictions, furthermore, there are State-funded compensation schemes for criminal injuries that entitle victims of crimes to compensation by the State. In principle, victims of domestic violence are entitled to compensation from the compensation schemes, but many limit their application to the domestic context. For example, the Belgian scheme applies only to victims who have sustained a physical injury or whose health has suffered, while the British scheme is not available to victims who live with their assailants. Some victims of domestic violence have, however, received compensation under schemes of this nature. For example, in Australia, a woman who had been the victim of long-term violence from her former cohabitant, and who was left with anxiety, symptoms of panic, insomnia and nightmares, was awarded $A 45,000 under such a scheme in 1991.

Protection orders

Many jurisdictions, including those of Australia, Bahamas, Barbados, New Zealand, Puerto Rico, Trinidad and Tobago, 48 states of the United States and the District of Columbia, have introduced legislation that provides for a court order, frequently

called a protection order or injunction, usually obtained on the civil standard of proof - the balance of probabilities - to protect a victim against domestic harassment. In most cases, the breach of such an order is a criminal offence and, in general, this legislation entitles the police to arrest, without warrant, any person who breaches such an order.

The legislation establishing protection orders, which are usually available in addition or as an alternative to pre-existing criminal or divorce-related remedies, differ in detail. In general, however, they allow a judge to require a man to leave the family home, even when it belongs to him, forbid him to harass or molest the woman in any way or to enter the premises where she works or within a specified locality or distance of the woman. Some also require the husband to pay financial support, to establish temporary custody and visitation arrangements for any children, to surrender any firearms or other weapons, to limit his drinking or to attend counselling.

Statutory definitions of conduct authorizing protection orders vary. All provide relief in circumstances where the husband has indulged in physical violence and threatens to do so again, and some provide relief when there have been threats of physical violence, intimidation or sexual abuse.[16] The criteria of eligibility for relief also varies, the broadest being provided by those statutes that qualify any person who: fears violence from another person; is currently living with another person; or who once lived with the particular person; and persons who have neither lived together nor been married but who have a child in common. Some legislation is more limited, rendering only former and current spouses and cohabitants eligible for relief, while some restrict relief to married spouses who are still cohabiting.[17]

In general, the procedure for non-emergency protection orders is similar to that pertaining in civil matters. The court is petitioned, a notice is sent to the defendant and the matter is heard by a judicial officer. Most statutes, however, provide for *ex parte* orders where there is immediate or present danger, some allowing for the issue of emergency protection orders outside normal court hours. Indeed, the statute of Colorado, United States, permits police officers to telephone a judge for an emergency order from the victim's home whenever the court-house is closed. Some statutes, furthermore, widen access to protection orders by giving a state authority (such as the commissioner of police) or an agent of the woman (such as a friend or woman's refuge) the right to seek an order on the woman's behalf.

B. Sexual harassment

Introduction

In general terms, legal remedies for harassment in national systems depend on whether the harassment constitutes a crime (such as rape, sexual assault, indecent or common assault) or a civil wrong. Thus, in most countries, the principal legal remedies available for women who are sexually harassed are to be found in the penal or civil codes. In essence, therefore, in many jurisdictions, whether a woman can claim a legal remedy for harassment depends on the legal definition of crimes or civil wrongs.

> *Sexism is the systematic oppression of women and the perpetration of violence against women because of their gender. Sexism is a system that is based on male privilege and power. Women are devalued through underrepresentation in social and political institutions and stereotypical portrayals in the media. Negative social messages about women prevail in popular culture and many women suffer low self-esteem as a result. Sexism is practised through economic inequality as well as through the perpetration and the threat of violence and sexually based abuse.*
>
> A Progress Report, Canadian Panel on Violence against Women, 1992.

In some jurisdictions, such as those of France and Germany, the criminal law is used in cases of sexual harassment. There are a number of difficulties in using the criminal law in this context, however. First, in most cases criminal codes establish offences in cases of actual physical assault or molestation and, therefore, only the most egregious forms of harassment faced by women are subject to sanction under their terms. Second, the decision of whether to bring proceedings that might result in penal sanction is almost always that of the police or a government official, such as a prosecutor, rather than the woman. Third, the proof required in a successful prosecution is high, the fundamental principle of the criminal law being that an accused person is innocent until proved guilty. Fourth, as harassment usually occurs in private, evidence to establish the allegation is difficult to obtain, particularly in jurisdictions that limit the use of the uncorroborated evidence of the victim. Finally, although a successful criminal prosecution will punish the harasser, it will not provide the victim with compensation, nor, if the harassment occurs in circumstances such as the workplace, impose liability on the employer for the acts of employees.

Although it is similarly difficult to establish that acts of harassment fall within the definition of civil wrongs, there is a greater possibility that they fall within the rubric of claims such as assault and battery, defamation,

nuisance, malicious falsehood or breach of contract than within criminal offences. There are further advantages when the harassment can be defined as a civil wrong: the evidence required to establish the claim is less than that required in a criminal action; a successful claimant is entitled to financial compensation, which can be substantial;[18] an injunction or interdict to prohibit a recurrence of the conduct is granted and, when the harassment occurs in the workplace, the harasser's employer is vicariously liable for his actions. Exceptionally, some countries do have specific legislation that prohibits sexually offensive behaviour. In India, for example, section 509 of the Penal Code, establishes the offence of insulting the modesty of a woman, whether by word, gesture or act. Furthermore, the Delhi Metropolitan Council has criminalized "eve-teasing", which is defined as words, spoken or written or signs or visible representations or gestures, or acts or reciting or singing indecent words in a public place by a man to the annoyance of a woman. This crime is punishable by a minimum of seven days' imprisonment. In Germany, article 185 of the Criminal Code sanctions insults, while in England and Wales, legislation proscribes "kerb-crawling", defined as soliciting a woman for the purposes of prostitution, from a motor vehicle.[19] Again, the Pakistan Penal Code establishes the offence of stripping a woman of her clothes and exposing her to public view as a crime punishable by life imprisonment or death.[20]

Specific coverage

A number of jurisdictions provide legal redress for harassment that does not meet the definition of a crime or constitute a civil wrong in specific circumstances. In general, this legal protection is available where harassment occurs in the workplace or, less commonly, in educational institutions or in the provision of services, such as accommodation or professional advice or care.

Only a limited number of jurisdictions, however, have express provisions covering harassment in these circumstances, while others provide redress through provisions that have been interpreted as implicitly covering such conduct.

In June 1991, France enacted a provision allowing courts to impose fines and one year's imprisonment on anyone who "abusing authority conferred on them by their position, uses pressure to obtain favours of a sexual nature". The legislation covers harassment, which is defined as any "word or gesture, attitude or behaviour by a hierarchical superior with a view to compelling an employee to respond to a solicitation of a sexual nature". Similarly, legislation in the Bahamas establishes the offence of sexual harassment, punishable by a fine or imprisonment for two years, or both. This legislation is applicable when a prospective employer, employer or co-worker solicits sexual favours by the promise or threat of the grant or imposition of any favour, benefit, advantage or disadvantage and when advantages are sought by the promise of sexual favours. Prosecution of the offence in the Bahamas can only be commenced when the Attorney General consents.

Canada, in its federal Human Rights Act, prohibits sexual harassment in employment and in the provision of goods and services when these come within the jurisdiction of the federal Government. This legislation is complemented at the federal level by the sexual harassment provisions of the Canada Labour Code, which establishes that every employee is entitled to employment free of sexual harassment, requires employers to issue a sexual harassment policy condemning sexual harassment, indicates that disciplinary measures will be taken against transgressors, provides for procedures to deal with instances of harassment and informs employees of their rights under the Human Rights Act. Furthermore, a number of provincial human rights codes in Canada specifically address the issue of harassment, prohibiting sexual harassment in the workplace and other situations where a woman might be vulnerable, providing a complaint and compensation procedure. Similar legislation is to be found in a number of Australian states. Thus, for example, the Western Australian Equal Opportunity Act establishes a legislative regime to deal with sexual harassment by employers, fellow employees, educators and landlords. In the Sex Discrimination Act of 1984, furthermore, the Australian federal Government provides remedies for sexual harassment, indicating that it is illegal for an employer to sexually harass a person who is seeking to be, or who is, in his or her employment and for an individual who is a member of an educational institution to harass an actual or potential student of that institution.

The legislation that specifically proscribes sexual harassment enacted in Australia and Canada follows a fairly similar pattern. There are differences, however, in the definition of the employment covered. The federal Australian and Western Australian acts, for example, extend the definition to cover contract workers and commission agents in an attempt to protect women in the less formal sectors of employment.

The Canada Labour Code states that sexual harassment is any conduct, comment, gesture or contact of a sexual nature that: (a) is likely to cause offence or humiliation to any employee; or

(b) might on reasonable grounds be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion. Similarly, the Manitoba Human Rights Code of 1987 defines harassment as: (a) a course of abusive and unwelcome conduct or comment made on the basis of any prohibited ground of discrimination; (b) a series of objectionable and unwelcome sexual solicitations or advances; (c) a sexual advance or solicitation made by a person who is in a position to confer any benefit or deny benefit to the recipient of the solicitation or advance if the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or (d) a reprisal or threat of reprisal for rejecting a sexual solicitation or advance.

Definitions such as these make it clear that conduct such as touching, feeling or other physical actions are proscribed, as are other forms of harassment, such as notices sent to the person or suggestive comments made about a person in that person's presence. Judicial decisions from various jurisdictions have determined that behaviours that fall within the definition include intrusive questions asked at interviews and at work, sexually explicit conversations, persistent requests for dates and demands that sexually suggestive clothing be worn.

The legislation of Australia and Canada establishes a similar conciliatory, rather than judicial, process for the resolution of allegations of sexual harassment. In Australia, commissioners, who work in conjunction with the Human Rights and Equal Opportunity Commission at the federal level, or the Equal Opportunities Commission at the state level, are appointed to act as the tribunal under the legislation. These commissioners have the responsibility of examining complaints and endeavouring, through conciliation, to reach a settlement. If complaints cannot be settled through conciliation, the matter can be referred to the relevant commission which will, in turn, attempt to conciliate. Both the commissioners and the commissions are entitled to call for information and to summon witnesses who are obliged to attend. The commissions can issue declarations or determinations at the end of the inquiry, which the woman can seek to have enforced in a court. These declarations or determinations can include a statement that the harasser behaved unlawfully, that he should redress any damage suffered by the woman, that he should re-employ her, that he should promote her, and that he should pay her damages or any other action that is appropriate. [21]

The resolution of complaints of sexual harassment is similar in Canada. Under the Federal Human Rights Act, for example, an independent human rights commission investigates complaints of discrimination, which include sexual harassment. After investigation, the commission decides whether the complaint should be heard by an independent tribunal. The commission has powers to appoint a conciliator before the case goes before a tribunal. As in Australia, the tribunal can order remedies such as compensation and reinstatement and liability extends beyond the individual offending the employee and renders the employer as vicariously liable. As in Australia, the Canadian legislation makes it an offence to intimidate or victimize a complainant.

Implicit coverage

Some jurisdictions, although not providing specific legal remedies for sexual harassment, have established recovery for such activity, by legislation on employment. As this legislation does not address sexual harassment explicitly, the protection given to women is implicit, piecemeal and, judged by the absence of complaints, inadequate.

All member States of the European Community (EC) have incorporated into their legislations, to a greater or lesser degree, article 5(1) of the European Community Equal Treatment Directive, which guarantees working conditions, including conditions governing dismissal, without discrimination between women and men. A number of jurisdictions, most notably those of EC members, have enacted legislation that prohibits discrimination in employment on the grounds of sex. Some national courts and tribunals have been prepared to interpret discrimination in employment on the basis of sex as encompassing sexual harassment, concluding that it consists of less favourable treatment for the complainant because of her sex. In these jurisdictions, proven

harassment may render an employer liable in damages.

Thus, for example, in 1986, in the case of Strathclyde Regional Council v. Porcelli, where the complainant had been subjected to a deliberate campaign of vindictiveness, including sexual behaviour, by two male colleagues, the Scottish Court of Appeal concluded that discrimination on the ground of sex exists if a woman is treated unfavourably and if any part of the treatment includes a significant element of a sexual character to which a man would not be vulnerable. The Court also indicated that sexual harassment is a "particularly degrading and unacceptable treatment which it must be taken to have been the intention of Parliament to restrain". Similar decisions have also been reached using similar legislation in Denmark, Ireland and New Zealand.

The view that sexual harassment constitutes sex discrimination for the purposes of redress within equal opportunities legislation is not universal. Within the EC countries, which all have such legislation, only Ireland and the United Kingdom equivocally accept that sexual harassment is unlawful sex discrimination,[22] but similar provisions in Belgium, Finland, Greece, Italy, Luxembourg, Portugal and Spain have not been employed in this context.[23] There are various reasons for this, the most fundamental being that the sanctions available under the equal treatment legislation is often inappropriate for cases of sexual harassment. For example, the remedy for breach of the provision in the Netherlands is to declare the discriminatory act a legal nullity. Some countries provide for the award of damages, which are sometimes only nominal and usually modest. Thus, in Ireland, for example, the amount of compensation may not exceed that of two years' salary. Unusually, other sanctions are available. The legislation of the United Kingdom, for example, allows the Industrial Tribunal to make a recommendation that the respondent take action to obviate or reduce the adverse effect on the complainant of acts of discrimination of which she complains. This legislation also allows some scope for remedies that might discourage future incidents of sexual harassment: powers are conferred on the Equal Opportunities Commission to serve a "non-discrimination notice" on an employer, while section 71 allows the Commission to apply for an injunction when there has been a finding by a tribunal that a person has committed an unlawful discriminatory act and it appears that, unless restrained, he is likely to commit the act again. However, neither of these provisions have been used in the context of sexual harassment.[24]

Remedies for sexual harassment have also been provided under employment protection legislation that exists in some countries to protect workers from unfair dismissal. Some tribunals have been prepared to hold that sexual harassment may amount to unfair dismissal and entitle the victim to the remedies of compensation or damages. For example, in the case of Western Excavating (ECC) v. Sharp, the English Court of Appeal was prepared to conclude that "persistent and unwanted amorous advances by an employer to a female employee would be conduct leading to a breach of contract" giving the victim remedies in constructive dismissal (i.e. with compensation). Despite such decisions, unfair dismissal legislation is of limited value as a remedy for sexual harassment. Usually, its provisions are applicable only after a minimum period of employment and remedy is available only after the employee has been dismissed either with or without compensation. Accordingly, the prerequisite of such remedy is the termination of the complainant's employment, which may be too high a price to pay, particularly where opportunities of alternative employment are scarce and compensation is likely to be limited.

Some jurisdictions have provided relief in cases of harassment under provisions concerning health and safety in the workplace. In Spain, for example, in 1990, the court of Castilla-La Mancha ruled that a nurse who had been sexually assaulted by one of her colleagues should receive 10 per cent of her wages from her employer as disability pay for the 20 months that she was unable to work following the attack, on the grounds that the attack constituted an occupational accident.

In several countries, an employer has a duty not to undermine the employee's dignity as a worker. This duty may be found in civil or labour codes or from implied or subsidiary contractual obligations. It is expressed in a variety of ways: the duty of mutual trust and confidence, obligations relating to physical, emotional and psychological working conditions, offences against the personality and respect for the dignity of workers. In some countries, these obligations have formed the legal basis of claims against sexual harassment. For example, a woman worker who had been harassed by her supervisor successfully employed article 328 of the Swiss Code of Obligations, which requires an employer to respect the staff's personality rights, to establish her claim.[25]

Some national systems, therefore, provide legal redress for sexual harassment; however, so far, the focus of attention has been on workplace harassment, although some countries have been prepared to extend the concept to cover harassment that occurs in educational institutions or other contexts, such as the

provision of housing and of professional services. If harassment occurs in other situations, a complainant must rely on general legal provisions. Even where workplace harassment is concerned, a significant number of countries have not established overt legal coverage, but have allowed the interpretation of sexual discrimination in the workplace to encompass sexual harassment. The result of this has been that remedies that have been introduced and regarded as appropriate to address other injustices have been used in cases of sexual harassment where they may not be as appropriate. Furthermore, the provision of legal remedies for workplace harassment has been largely confined to the formal sector. Unfortunately, it is in the informal sector where cases of sexual harassment appear to be the most common and such employment is usually not covered by human rights, employment or equal treatment legislation. Certainly, in the United Kingdom, the Sex Discrimination Act applies only where the complainant's employer employs six or more workers. Furthermore, certain categories of workers, such as domestics or migrant workers, who are frequently very vulnerable to sexual harassment, are not covered by provisions in labour statutes. For example, the Kuwaiti law on the Organisation of Labourers and Employees (No. 38, chap. XIII) specifically excludes domestic servants and migrant workers from its provisions.

Stronger legal remedies for sexual harassment in the workplace are likely to be introduced in EC countries following the issuance by the European Parliament of a code of practice on sexual harassment in October 1991 and a recommendation by the Commission of the European Communities on 27 November 1991 concerning the protection of the dignity of women and men at work.

The code, which has no legal effect, defines sexual harassment as "unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work. This can include unwelcome physical, verbal or non-verbal conduct". It encourages employers to issue a policy statement on harassment, to communicate this effectively to employees, to develop a procedure for advice, assistance and formal complaints and to treat sexual harassment as a disciplinary offence. Recommendations concerning the responsibilty of trade unions and employees are also made in the code.

The status of the code of conduct is enhanced by the Commission of the European Communities recommendation,[36] which recommends that Member States implement the code in the public sector and take action to promote awareness that:

> *"Conduct of a sexual nature, or other conduct based on sex affecting the dignity of men and women at work, including conduct of superiors and colleagues, is unacceptable if:*
>
> *"(a) Such conduct is unwanted, unreasonable and offensive to the recipient;*
>
> *"(b) A person's rejection of, or submission to, such conduct on the part of employers or workers (including superiors or colleagues) is used explicitly or implicitly as a basis for a decision which affects that person's access to vocational training, access to employment, continued employment, promotion, salary or any other employment decisions; and/or*
>
> *"(c) Such conduct creates an intimidating, hostile or humiliating work environment for the recipient."*

The recommendation obliges member States to report to the Commission on the measures taken to implement it by 1994.

Notes

[1] *Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1-12 September 1975: report prepared by the Secretariat* (United Nations publication, Sales No. 76.IV.2).

[2] General Assembly resolution 34/180 of 18 December 1979.

[3] *Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace, Copenhagen, 14-30 July 1980* (United Nations publication, Sales No. E.80.IV.3 and corrigendum), chap. I, sect. B.

[4] *Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, Caracas, 25 August-5 September 1980; report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

[5] *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, 15-26 July 1985* (United Nations publication, Sales No. E.85.IV.10), chap. I, sect. A.

[6] *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. C.

[7] *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 38* (A/44/38), chap. V.

[8] *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, sales/No./E.91.IV.2), chap. I, sect. A.

[9] *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 38* (A/47/38), chap. I.

[10] The Sexual Offences and Domestic Violence Act of 1991 of the Bahamas proves an exception to this general rule. This Act enacts the criminal law relating to sexual offences, establishes the crime of sexual harassment and provides protection for victims of domestic violence.

[11] The physical chastisement of wives is culturally acceptable in a number of societies.

[12] Jessica Goldman, "Arresting wife batterers: a good beginning to stopping a pervasive problem", *Washington Law Quarterly*, vol. 69, 1991, p. 843.

[13] Chile and Ireland are two of the countries where marriage is indissoluble.

[14] See the case of Curtis v. Curtis [1989] in Cyprus, EKD 3997, which decided that cruelty is a ground for dissolution of marriage if it causes danger to life, limb or health, body or mind or gives rise to a reasonable expectation of such danger.

[15] In many civil codes, including that of Brazil, refusal of sex is a legal ground for separation.

[16] National Institute of Justice, Civil Protection Orders: Legislation, Current Court Practice and Enforcement, on pages 12 and 13, provides a comparative chart of the statutes of the United States. This indicates that protection orders are available to protect against physical abuse in all jurisdictions, against threatened physical abuse in 43 states and against attempted physical abuse in 40 states, while only 28 states specifically include sexual assault as a ground for relief.

The Barbados Domestic Violence (Protection Orders) Act 1992 provides a typical example of grounds for protection orders:

"(3) (1) Where on an application ... the Court is satisfied ... that a person

"(a) has engaged in or threatened to engage in conduct that is capable of constituting a criminal offence or an attempt to commit a criminal offence against the spouse, former spouse or child of that person or some other member of that household under any law; or

"(b) has engaged in conduct that may reasonably be regarded as harassment of the spouse, former spouse or child, or other member of the household, and unless that person is restrained, is likely to engage in further conduct that would constitute that or another offence referred to in paragraph (a) or (b), it may make an order ....

"Harassment, for the purposes of the act is defined to include:

"(a) the intimidation of a person by

(i) persistent verbal abuse;

(ii) threats of physical violence;

(iii) the malicious damage of the property of a person; or

(iv) any other means;

"(b) the persistent following of a person about from place to place;

"(c) the hiding of any clothes or other property owned by or used by a person or the depriving of a person of the use thereof or the hindering of a person in the use thereof; or

"(d) the watching or besetting of the house or other place where a person resides, works, carries on business or happens to be, or the approach to the house or the other place;"

[17] National Institute of Justice, op. cit., pp. 8 and 9, compares eligibility.

[18] Sally Meurhing, a British publishing executive, subjected to sexual harassment, sued her former employers Emap for breach of contract, assault and battery and malicious falsehood. She accepted £25,000 from Emap in settlement of her claim in February 1989. It is estimated, however, that her employers spent over £70,000 in legal costs defending her action. See Sally Hughes, "New territory in a man's world", *New Law Journal*, 1989, p. 1675.

[19] Sexual Offences Act, 1985. Critics suggest that the aim of this legislation is not to protect women from violence, but to penalize working prostitutes. See S. M. Edwards, "Prostitution: ponces and punters, policing and prosecution", *New Law Journal*, 1985, p. 928.

[20] Pakistan Penal Code, 1860, section 354 inserted by the Criminal Law (Amendment) Ordinance 1984. This provision, inserted because of a particular incident in Pakistan, has never been used.

[21] See F. Marles, *Workplace Approach to Sexual Harassment* (Canberra, Australian Government Publishing Service, 1991), pp. 17-19.

[22] Michael Rubenstein, "The dignity of women at work: a report on the problem of sexual harassment in the member States of the European Communities", October 1987 (V/412/1/87), p. 25.

[23] Ada Garcia, "Sexual violence against women: a contribution to a strategy for countering the various forms of such violence in the Council of Europe Member States", *Council of Europe EG(91)*, 1, 1991, pp. 34-37.

[24] Rubenstein, op. cit., pp. 34-35.

[25] Garcia, op. cit., p. 37.

[26] Judicial decisions establish that such recommendations "cannot be considered as lacking in legal effect".

GERTRUDE MONGELLA

appointed Secretary-General of the Fourth World Conference on Women

On 4 December 1992, the Secretary-General of the United Nations, Boutros Boutros-Ghali, announced the appointment of Gertrude Mongella of the United Republic of Tanzania as Secretary-General of the Fourth World Conference on Women. At the time, Ms. Mongella was serving as her country's High Commissioner to India. Previously she had been Minister of State responsible for Women's Affairs. She had also been Minister of Lands, Natural Resources and Tourism from 1986 to 1987 and Minister without Portfolio in the President's Office from 1987 to 1990.

Over the past 10 years, Ms. Mongella has represented her country at numerous international meetings and conferences, particularly on issues relating to women and to the environment. In 1985, she headed her country's delegation at the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women held at Nairobi, where she was one of the Vice-Presidents of the Conference and also

Chairperson of the African Group. She also headed the Tanzanian delegation both on the Commission on the Status of Women in 1989 and in presenting her country's report to the Committee on the Elimination of Discrimination against Women in 1990. In 1991, she attended the World Women's Congress for a Healthy Planet and the Global Assembly on Women and the Environment in Miami and participated as a Government Observer in the Expert Group Meeting on Women and HIV/AIDS and the Role of National Machinery for the Advancement of Women at Vienna.

Ms. Mongella has also participated in several international seminars and workshops on women and development and environmental issues. She was one of the experts at the Expert Group Meeting on Equality in Political Participation and Decision Making, held at Vienna in 1989.

Holding a degree in education from the University College of Dar-es-Salaam, Ms. Mongella started her career as a teacher and then as an inspector of secondary schools and teacher training colleges before entering politics. She is a mother of four.

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